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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88760; File No. SR-FINRA-2020-012]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to Allow the Dissemination of IAPD Information through BrokerCheck**

April 28, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 22, 2020, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

allow the dissemination through BrokerCheck<sup>®</sup> of information already publicly disseminated through the SEC’s Investment Adviser Public Disclosure (“IAPD”) database about registered brokers who are, or were, licensed as investment adviser representatives. The proposed rule change also would make non-substantive, technical changes to FINRA Rule 8312.<sup>4</sup>

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) BrokerCheck Program

FINRA established the BrokerCheck program (then known as the Public Disclosure Program) in 1988 to provide investors and the general public with information on the professional background, business practices, and conduct of member firms and their associated

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<sup>4</sup> Specifically, the proposed rule change would define in FINRA Rule 8312(a)(2) “a current or former associated person of a BrokerCheck Firm” as a “BrokerCheck Associated Person.” In addition, the proposed rule change would require the renumbering of current paragraph (d) as new paragraph (g) of FINRA Rule 8312, and the updating of cross references.

persons. Since establishing BrokerCheck, FINRA has regularly assessed the scope and utility of the information it provides to the public and, as a result, has made numerous changes to improve the program. These changes have made BrokerCheck easier to access by expanding the available methods of requesting information through the program. For instance, initially the public could request information only via U.S. mail or facsimile. FINRA subsequently added the ability to submit requests via a toll-free telephone number in 1991 and then through email in 1997.<sup>5</sup> Now BrokerCheck reports are available instantly online at <https://brokercheck.finra.org>.<sup>6</sup> FINRA also has increased the amount of information available through the program. At first, limited employment history, final disciplinary actions and criminal convictions were available through BrokerCheck. The information currently available to investors through BrokerCheck includes registrations brokers hold and the examinations they have passed, and disclosure information regarding various criminal, regulatory, customer dispute, termination and financial matters on current and former FINRA-registered brokerage firms and brokers.

The information displayed through BrokerCheck is derived from the Central Registration Depository (“CRD®”).<sup>7</sup> The CRD system is the central licensing and registration system used by

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<sup>5</sup> Congress in 1990 amended Exchange Act Section 15A to require FINRA to establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its member firms and their associated persons, and promptly respond to such inquiries in writing. See Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101-429, 104 Stat. 931 (1990). See also Notice to Members 00-16 (March 2000).

<sup>6</sup> In 2006 Congress again amended Exchange Act Section 15A to, among other things, expand the methods by which BrokerCheck information is made available. See Military Personnel Financial Services Protection Act, Pub. L. No. 109-290, 120 Stat. 1317 (2006).

<sup>7</sup> The concept for the CRD system was developed by FINRA jointly with the North American Securities Administrators Association (“NASAA”), and NASAA and state regulators play a critical role in its ongoing development and implementation. FINRA operates the CRD system pursuant to policies developed jointly with NASAA. FINRA

the U.S. securities industry and its regulators. In general, information in the CRD system is obtained through the uniform registration forms that firms and regulatory authorities complete as part of the securities industry registration and licensing process.<sup>8</sup> These forms, particularly Forms U4 and U5, collect administrative, regulatory, criminal history, customer complaint and other information about brokers.<sup>9</sup> FINRA, state and other regulatory authorities use this information in connection with their licensing and regulatory activities, and member firms use this information to help them make informed employment decisions. As of March 31, 2020, FINRA had processed over 56 million registration approvals for brokers and investment adviser representatives in the CRD system over a period spanning more than 20 years.

Pursuant to rules approved by the SEC, FINRA makes specified information in the CRD system publicly available through BrokerCheck.<sup>10</sup> BrokerCheck is part of FINRA's ongoing effort to help investors make informed choices about the brokers and broker-dealer firms with which they may conduct business. BrokerCheck maintains information on the approximately 3,610 registered broker-dealer firms and 625,000 registered brokers. BrokerCheck also provides

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works with the SEC, NASAA and other members of the regulatory community to ensure that information submitted and maintained in the CRD system is accurate and complete.

<sup>8</sup> The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR (Uniform Branch Office Registration Form), Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration), and Form U6 (Uniform Disciplinary Action Reporting Form).

<sup>9</sup> FINRA and NASAA jointly drafted the Forms U4 and U5, and both organizations collaborate in the development of any proposed amendments to these Forms.

<sup>10</sup> There is a limited amount of information in the CRD system that FINRA does not display through BrokerCheck, including personal or confidential information. A detailed description of the information made available through BrokerCheck is available at <https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck>.

the public with access to information about formerly registered broker-dealer firms and brokers.<sup>11</sup> In 2019 alone, BrokerCheck helped users conduct almost 41 million searches of firms and brokers.

(b) IAPD Database

IAPD provides information about both SEC-registered and state-registered investment adviser firms, certain investment adviser firms that are exempt from registration with the SEC or states, and state-registered investment adviser representatives. The information in IAPD is derived from the Investment Adviser Registration Depository (“IARD”), an electronic filing system sponsored by the SEC and NASAA that collects and maintains the registration, reporting and disclosure information for investment advisers and related persons.

BrokerCheck and IAPD have many similarities. For example, both systems display information about individuals that has been filed with the CRD system on Forms U4, U5 and U6.<sup>12</sup> In addition, information on many registered individuals can be obtained in either system because the majority of brokers are also registered as investment adviser representatives and vice versa.<sup>13</sup> Despite the similarities, there are some differences between BrokerCheck and IAPD,

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<sup>11</sup> Formerly registered brokers, although no longer in the securities industry in a registered capacity, may work in other investment-related industries or may seek to attain other positions of trust with potential investors. BrokerCheck provides information on more than 16,900 formerly registered broker-dealer firms and 564,000 formerly registered brokers. Broker records are available through BrokerCheck for 10 years after a broker leaves the industry, and records of brokers who are the subject of disciplinary actions and certain other events remain on BrokerCheck permanently.

<sup>12</sup> With respect to investment adviser representatives, IARD provides for the filing of these Forms through the CRD system.

<sup>13</sup> To help investors access information on the minority of individuals who are not dually registered, FINRA in 2012 unified the search returns for the IAPD and BrokerCheck databases. This change resulted from a study released by SEC staff in January 2011 that included recommendations on improving investor access to investment adviser and broker-dealer registration information. The study was required by Section 919B of the

including the information available, the presentation format, and the manner in which users may obtain information from the systems. For instance, the systems display different information pertaining to professional designations, passed qualification examinations, and registrations. The systems differ also in the manner in which detailed information about firms is made available to users. BrokerCheck displays a report that is developed from the information reported on Forms BD and BDW whereas IAPD provides links to the most recently filed Form ADV, Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers, and the Form ADV Part 2 Brochures in a Portable Document Format (“PDF”).

(c) Display of Additional Investment Adviser Representative Information

The SEC’s Investor Advisory Committee (“IAC”) recommended the development of more complete, simple and centrally operated search functions that permit thorough understanding of the background of those offering financial products and financial advice.<sup>14</sup> Shortly after the IAC’s recommendations were issued, FINRA and SEC staff began discussing how best to align changes to IAPD under consideration by the SEC with possible changes to BrokerCheck to provide users with more comprehensive, consistent, and easier access to information already publicly disseminated about individuals that is contained in both systems. On February 15, 2020, the SEC implemented changes to IAPD to display information that is already publicly disseminated through BrokerCheck.<sup>15</sup> As such, FINRA is proposing to amend Rule 8312 to make corresponding changes to allow the dissemination through BrokerCheck of

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Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>14</sup> The IAC’s recommendations are available at [https://www.sec.gov/spotlight/investor-advisory-committee-2012/final\\_iac\\_backgroundcheck\\_recommendation\\_071615.pdf](https://www.sec.gov/spotlight/investor-advisory-committee-2012/final_iac_backgroundcheck_recommendation_071615.pdf).

<sup>15</sup> This information includes self-regulatory organization and state broker licenses, and broker qualification exams passed.

information already publicly disseminated through IAPD about registered brokers who are, or were, licensed as investment adviser representatives. This change would allow users of BrokerCheck to obtain the available information about these individuals in a single search of BrokerCheck or IAPD and thereby minimize the need to access multiple databases.<sup>16</sup>

(d) Proposed Amendments

As previously discussed, information about brokers and investment adviser representatives is filed with the CRD system through certain registration forms. Some of the information reported for an investment adviser representative is displayed in BrokerCheck if such an individual also has, at some point, been registered as a broker. Specifically, the following information reported by an investment adviser representative (if displayed in IAPD) is made available through BrokerCheck:

- current investment adviser firm (applies only to a currently registered investment adviser representative);
- identifying information (name changes, other names);
- employment history for the past 10 years;
- state qualification exams passed;
- other business activities; and
- disclosure events (excluding historic disclosure events).<sup>17</sup>

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<sup>16</sup> FINRA notes that the proposed rule change would impact members that have elected to be treated as capital acquisition brokers (“CABs”), given that the CAB rule set incorporates the impacted FINRA rule by reference.

<sup>17</sup> Historic disclosure events (i.e., certain disclosure events involving customer dispute information reported in the CRD system that became no longer reportable after an individual’s first investment adviser representative registration was approved but before the individual’s first broker registration was approved) currently are not included in BrokerCheck.

FINRA proposes to add new paragraph (d) to FINRA Rule 8312 to provide that FINRA may release through BrokerCheck information already publicly disseminated through IAPD about a BrokerCheck Associated Person currently associated with a BrokerCheck Firm who is, or was, licensed as an investment adviser representative.<sup>18</sup> Accordingly, under the proposed rule change, the following additional information would be displayed through BrokerCheck for those individuals who are currently dually registered as a broker and an investment adviser representative:

- state investment adviser representative licenses;
- current and past investment adviser firms, registered branches, and non-registered locations that are not private residences where the individual is or was registered;
- historic disclosure events; and
- professional designations.<sup>19</sup>

In addition, for those individuals who are currently registered as brokers and were previously registered as investment adviser representatives, BrokerCheck would display all of the publicly disseminated additional investment adviser representative information listed above, except for professional designations because a previously reported professional designation may no longer be in effect. However, if a registered broker currently holds a professional

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<sup>18</sup> A “BrokerCheck Firm” is a current or former FINRA member or a current or former member of a registered national securities exchange that uses CRD for registration purposes. See FINRA Rule 8312(a)(1). See also supra note 4.

<sup>19</sup> Should the SEC in the future make additional categories of information about investment adviser representatives publicly available in IAPD, FINRA will consult with the SEC regarding the dissemination of the additional information through BrokerCheck. The dissemination through BrokerCheck of the additional information may apply to those individuals who are currently dually registered as a broker and an investment adviser representative, as well as those individuals who are currently registered as a broker and were previously registered as an investment adviser representative.



designation, this information would be displayed through BrokerCheck if reported by the broker via Form U4.

For any individual who currently is not registered as a broker, such as a currently registered investment adviser representative who was formerly registered as a broker, the additional investment adviser representative information referenced above would not be displayed through BrokerCheck. As it does today, BrokerCheck would continue to include a link to IAPD for those individuals who are or were previously registered in an investment adviser representative capacity so that investors could obtain further information about such individuals in that system.<sup>20</sup> Furthermore, FINRA plans to add a notation in BrokerCheck for formerly registered brokers who currently are registered as investment adviser representatives indicating that more current information regarding the investment professional is available in IAPD.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA anticipates that the implementation date of the proposed rule change will be June 20, 2020.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>21</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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<sup>20</sup> Similarly, with respect to firms, BrokerCheck will continue to include a link to the summary page of IAPD for a broker-dealer that also is registered as an investment adviser. From the IAPD summary page, users can easily view a PDF version of the most recently filed Form ADV for that firm. In addition, Form CRS will be accessible through BrokerCheck and IAPD upon its implementation in 2020. See Form CRS Relationship Summary; Amendments to Form ADV, Securities Exchange Act Release No. 86032 (June 5, 2019), 84 FR 33492 (July 12, 2019).

<sup>21</sup> 15 U.S.C. 78o-3(b)(6).

Following ongoing discussions with SEC staff, FINRA is proposing to amend Rule 8312 to allow the dissemination through BrokerCheck of information already publicly disseminated through IAPD about registered brokers who are, or were, licensed as investment adviser representatives. The proposed rule change will align BrokerCheck with the changes the SEC implemented to IAPD on February 15, 2020, and will allow investors and other users of BrokerCheck to obtain the available information that already is publicly disseminated about these individuals in a single search of BrokerCheck or IAPD and thereby minimize the need to access multiple systems. FINRA believes that the proposed rule change will provide investors and other users of BrokerCheck with more consistent and easier access to information about the investment professionals with which they may conduct business because it will result in BrokerCheck displaying the same level of information that currently is available in IAPD.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet its regulatory objective.

Regulatory Need

BrokerCheck provides the public with information on the professional background, business practices, and conduct of FINRA member firms and their associated persons. FINRA

believes, however, that changes to the information presented in BrokerCheck can make BrokerCheck more useful for investors and other users of the system. Accordingly, FINRA is proposing to add to BrokerCheck investment adviser representative information for those individuals who are currently registered as brokers, and who are currently or were previously registered as investment adviser representatives.

### Economic Baseline

The economic baseline for the rule change is the current rule that addresses the types of information displayed in BrokerCheck. The proposal is expected to affect users of BrokerCheck, and currently and formerly registered firms and individuals. Users of BrokerCheck include investors, member firms and other entities in the financial services industry, and individuals registered as brokers or seeking employment in the brokerage industry.

The information displayed in BrokerCheck is derived from the CRD system. In general, the information enables users to make informed decisions regarding the firms currently registered as broker-dealers and the individuals currently registered as brokers. Decisions include the choice of firms or individuals to do business with or employ, and the choice of firms with which to seek employment.

The ability of users to access and review information related to individual brokers through BrokerCheck is constrained by certain limitations. One of these limitations is that BrokerCheck currently provides indirect access to information describing the investment advisory business of a broker, requiring users to access a separate system (IAPD) to gather additional information that could be relevant to their decision. The need to access a separate system increases users' search costs and reduces their ability to research and compare information about individuals in the brokerage industry.

## Economic Impacts

The proposed rule change would increase the amount of investment adviser information available or accessible through BrokerCheck, but would not change the aggregate information available to users of BrokerCheck and IAPD. Users of BrokerCheck would no longer need to access a separate system—IAPD—to obtain the information for individuals currently registered as brokers who are, or were, licensed as investment adviser representatives.<sup>22</sup> The ability to review this information in a more efficient manner would reduce user search costs, particularly for users that seek individuals who are experienced in or can offer both brokerage and advisory services. These users would also benefit by doing business with or employing individuals or firms with individuals that are experienced in or can offer services more closely aligned with their needs, thereby increasing their economic welfare.

Information that may become available or more accessible through BrokerCheck includes information relating to historic disclosure events of investment adviser representatives. Disclosure events reported to the CRD system, which include customer complaints, have been found to be predictive of future misconduct.<sup>23</sup> The review and consideration of this additional information before the selection of an individual with whom to do business or to employ may

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<sup>22</sup> BrokerCheck maintains information on 3,610 firms currently registered as broker-dealers and 625,000 individuals currently registered as brokers. Among the firms currently registered as broker-dealers, 526 (15 percent) are currently registered as investment advisers and 130 (four percent) were formerly registered as investment advisers. Similarly, among the individuals currently registered as brokers, 295,120 (47 percent) are currently registered as investment adviser representatives, and 16,458 (three percent) were formerly registered as investment adviser representatives.

<sup>23</sup> See Hammad Qureshi & Jonathan Sokobin, Do Investors Have Valuable Information About Brokers? (2015), <https://www.finra.org/sites/default/files/OCE-Working-Paper.pdf>. See also Mark Egan, Gregor Matvos & Amit Seru, The Market for Financial Adviser Misconduct, 127(1) *Journal of Political Economy* 233-295 (2019); and Stephen G. Dimmock, & William C. Gerken, Predicting Fraud by Investment Managers, 105(1) *Journal of Financial Economics* 153-173 (2012).

improve investor protections by increasing the ability of users to understand the potential risk of misconduct. It is anticipated, however, that there will not be a significant number of Historic Disclosure events to be displayed through BrokerCheck. The economic impact of this aspect of the proposed rule change, therefore, is expected to be limited.

The proposed rule change is not expected to harm or hinder competition among individuals currently registered as brokers who were previously registered as investment adviser representatives. Under the proposed rule change, similar past employment information as an investment adviser representative would be displayed through BrokerCheck regardless of whether that previous employment was at (1) a firm dually registered as a broker-dealer and an investment adviser, or (2) a firm solely registered as an investment adviser. Information is also currently available through IAPD describing the investment adviser firms at which the individuals were previously employed.

#### Alternatives Considered

No alternatives were considered for this proposed rule change.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the

Act<sup>24</sup> and Rule 19b-4(f)(6) thereunder.<sup>25</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2020-012 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2020-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

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<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2020-012 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>26</sup> 17 CFR 200.30-3(a)(12).

